

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**CORRECTED  
FISCAL NOTE**

**HB 1554 - SB 1991**

March 12, 2014

**SUMMARY OF BILL:** Requires a pharmacy benefits manager (PBM), prior to a PBM or covered entity placing a drug on a maximum allowable cost (MAC) list, to:

- Ensure there are at least three generically equivalent versions of that drug which are available for purchase by all pharmacies in this state from national or regional wholesalers; and
- Ensure the drug is not obsolete or temporarily unavailable or listed on a drug shortage list.

If a drug doesn't meet the above requirements it cannot be placed on a MAC list and any drug that is currently on a MAC list which doesn't meet such requirements has to be removed from the MAC within three business days after the PBM or covered entity becomes aware that the drug no longer meets such requirements. Requires a PBM or covered entity to provide all contracted pharmacies with all MACs used for each specific pharmacy and information explaining the methodology used to determine such MACs.

Prohibits a PBM from setting a MAC for any multi-source generic drug or medical product or device it places on a MAC list in an amount which is below the amount found in the source used by the PBM or covered entity to set the cost, nor can a PBM or covered entity include the pharmacist's dispensing fee or any other professional fee unrelated to the product, in calculating the MAC for any multi-source generic drug or medical product or device. Requires PBMs and any covered entity to create a process by which a pharmacy may appeal the MAC for a particular drug or medical product or device. If the appeal presented is found valid by the PBM or covered entity, and the cost was determined to be too high, the PBM or covered entity must provide retroactive reimbursement for such costs in the next payment cycle. PBMs and covered entities must place information on their websites which explain the appeals process. Violations of this act are punishable by the fines listed in Tenn. Code Ann. § 56-2-305.

## **ESTIMATED FISCAL IMPACT:**

On March 10, 2014, a fiscal note was issued estimating a fiscal impact as follows:

*Increase State Expenditures - \$167,874,400*

*Increase Federal Expenditures - \$10,665,000*

*Increase Local Expenditures – Exceeds \$8,942,700\**

Due to an incorrect calculation, this impact was in error. The estimated fiscal impact and the impact to commerce have been corrected.

### **(CORRECTED)**

**Increase State Expenditures - \$157,209,400**

**Increase Federal Expenditures - \$10,665,000**

**Increase Local Expenditures – Exceeds \$8,942,700\***

#### **Assumptions:**

- Prohibiting PBMs and covered entities from applying MACs on certain multi-source generic drugs, medical products or devices will result in a higher cost for such drugs.
- The Bureau of TennCare currently uses average wholesale price (AWP) and MACs to determine the costs of reimbursement to network pharmacy providers.
- MACs are used to determine the cost of reimbursement for generic drugs.
- According to the Bureau, based on a 30-day sample of generic drugs that are currently prohibited from being applicable to a MAC, when the cost of certain generic drugs were reimbursed using AWP instead, claims were, on average, \$10 more per claim.
- The total increase in costs for such 30-day period was \$96,424 or \$1,157,088 annually (\$96,424 x 12 months).
- According to the Bureau, TennCare's PBM suggested the MAC price be suspended on four products in December 2013 which would have resulted in increased costs of \$1,269,518 per month or \$15,234,216 annually (\$1,269,518 x 12 months).
- The additional increases in the cost of reimbursement for generic drugs will result in an increase in such reimbursements to network pharmacy providers of \$15,250,434 or in total, \$16,391,304 (\$1,157,088 + \$15,234,216).
- Of \$16,391,304, approximately \$5,726,302 will be state funds at a rate of 34.935 percent and \$10,665,002 will be federal funds at a 65.065 match rate.
- Plans administered by the Department of Finance and Administration, Division of Benefits Administration's PBM, will experience a similar increase in reimbursement costs to network pharmacy providers.

- According to the Division, the State Employee, Local Education, and Local Government health plans will incur increases in expenditures of approximately \$255,505,888, spread across three plans.
- This amount is applied to the three plans as follows:
  - State Employee Health Plan is \$137,973,180 ( $\$255,505,888 \times 0.54$ );
  - Local Education Plan is \$99,647,296 ( $\$255,505,888 \times 0.39$ );
  - Local Government Plan is \$17,885,412 ( $\$255,505,888 \times 0.07$ ).
- The state covers 80 percent of the employees' health costs in the State Employee Health Plan resulting in an increase in state expenditures of at least \$110,378,544 ( $\$137,973,180 \times 0.80$ ).
- The state portion of the Local Education Plan is 45 percent for Local Education instructional staff which is approximately 75 percent of LEA employees and 30 percent for support staff which is approximately 25 percent of LEA staff. The increase in state expenditures is estimated to be at least \$41,104,510 [ $(\$99,647,296 \times 0.75 \times 0.45) + (\$99,647,296 \times 0.25 \times 0.30)$ ].
- Each local government that participates in the state sponsored health plan is responsible for paying a percentage of the costs which is determined by the local government. It is assumed that local governments will contribute at least 50 percent of the cost resulting in an increase in local expenditures that will exceed \$8,942,706 ( $\$17,885,412 \times 0.50$ ).
- Any fines collected from violations of this act will result in no significant fiscal impact to the state.
- The total increase in state expenditures for FY14-15 and a subsequent year is estimated to be \$157,209,356 ( $\$5,726,302 + \$110,378,544 + \$41,104,510$ ).

*\*Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

## **IMPACT TO COMMERCE:**

**(CORRECTED)**

**Increase Business Revenue - \$176,817,100**

**Increase Business Expenditures - \$176,817,100**

**Other Fiscal Impact - Any increase in revenue experienced by the pharmaceutical industry will be offset by an increase in expenditures experienced by insurance providers. Insurance providers will likely increase premium rates to plan subscribers to offset expenditures. Due to multiple unknown factors, the extent of any premium increase is unknown.**

Assumptions:

- Pharmacies and drug companies will experience an increase in business revenue of approximately \$176,817,100.

- Pharmacy benefit managers will experience corresponding increase in business expenditures of approximately \$176,817,100. Insurance providers will likely pass on such costs to plan subscribers by increasing rates.
- Due to multiple unknown factors, the extent to which insurance providers will increase premiums to offset rising costs of PBM benefits is unknown.

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read 'Lucian D. Geise', with a stylized flourish at the end.

Lucian D. Geise, Executive Director

/jdb